

Rule 3-306. Court Interpreters.

Intent:

To declare the policy of the Utah State Courts to secure the rights of persons who are unable to understand or communicate adequately in the English language when they are involved in legal proceedings.

To outline the procedure for certification, appointment, and payment of court interpreters.

To provide certified interpreters in all cases in those languages for which certification programs have been established.

Applicability:

This rule shall apply to legal proceedings in the courts of record and not of record. This rule shall apply to interpretation for non-English speaking persons and not to interpretation for the hearing impaired.

Statement of the Rule:

(1) Definitions.

(1)(A) "Appointing authority" means a trial judge, administrative hearing officer, or other officer authorized by law to conduct judicial or quasi-judicial proceedings, or a delegate thereof.

(1)(B) "Approved interpreter" means an non-certified interpreter who has fulfilled requirements established by the ~~advisory panel~~committee.

(1)(C) "Certified interpreter" means a person who has fulfilled the requirements set forth in subsection 4.

(1)(D) "Committee" means the Court Interpreter Committee established by Rule 1-205.

~~(1)(D)~~(1)(E) "Conditionally-approved interpreter" means a non-certified interpreter who has completed an application form and, after responding to questions about background, education and experience pursuant to subsection (6)(C), has received conditional approval from the appointing authority.

~~(1)(E)~~(1)(F) "Code of Professional Responsibility" means the Code of Professional Responsibility for Court Interpreters set forth in Appendix H.

~~(1)(F)~~(1)(G) "Legal proceeding" means a civil, criminal, domestic relations, juvenile, traffic or administrative proceeding. Legal proceeding does not include a conference between the non-English speaking person and the interpreter that occurs outside the courtroom, hearing room, or

chambers unless ordered by the appointing authority. In juvenile court legal proceeding includes the intake stage.

~~(1)(G)~~(1)(H) “Non-English speaking person” means any principal party in interest or witness participating in a legal proceeding who has limited ability to speak or understand the English language.

~~(1)(H)~~(1)(I) “Principal party in interest” means a person involved in a legal proceeding who is a named party, or who will be bound by the decision or action, or who is foreclosed from pursuing his or her rights by the decision or action which may be taken in the proceeding.

~~(1)(I)~~(1)(J) “Witness” means anyone who testifies in any legal proceeding.

~~(2) Advisory panel. Policies concerning court interpreters shall be developed by a court interpreter advisory panel, appointed by the council, comprised of judges, court staff, lawyers, court interpreters, and experts in the field of linguistics. Court Interpreter Committee. The Court Interpreter Committee shall:~~

(2)(A) research, develop and recommend to the Judicial Council policies and procedures for interpretation in legal proceedings and translation of printed materials;

(2)(B) certify court interpreters who meet minimum qualifications;

(2)(C) issue opinions to questions regarding the Code of Professional Responsibility, and

(2)(D) discipline court interpreters.

(3) Minimum performance standards. All certified and approved interpreters serving in the court shall comply with the Code of Professional Responsibility.

(4) Certification.

(4)(A) Subject to the availability of funding, and in consultation with the ~~advisory panel~~committee, the administrative office shall establish programs to certify court interpreters in the non-English languages most frequently needed in the courts. The administrative office shall:

(4)(A)(i) designate languages for certification;

(4)(A)(ii) establish procedures for training and testing to certify and recertify interpreters;
and

(4)(A)(iii) establish, maintain, and issue to all courts in the state a current directory of certified interpreters.

(4)(B) To become certified an interpreter shall:

(4)(B)(i) prior to participation in the training program, pay a fee established by the Judicial Council to the administrative office to offset the costs of training and testing;

(4)(B)(ii) complete training as required by the administrative office;

(4)(B)(iii) obtain a passing score on the court interpreter's test(s) as required by the administrative office;

(4)(B)(iv) not have been convicted of a crime of moral turpitude; and

(4)(B)(v) have complied with the Code of Professional Responsibility if the interpreter has previously provided interpreting services to the Utah courts.

(4)(C) An interpreter may be certified upon submission of satisfactory proof to the ~~advisory panel~~committee that the interpreter is certified in good standing by the federal courts or by a state having a certification program that is equivalent to the program established under this section.

(5) Recertification.

(5)(A) Subject to the availability of funding, the administrative office shall establish continuing educational requirements for maintenance of certified status.

(5)(B) To maintain certified status, a certified interpreter shall:

(5)(B) (i) comply with continuing educational requirements as established by the administrative office; and

(5)(B) (ii) comply with the Code of Professional Responsibility.

(6) Appointment.

(6)(A) Certified interpreters. When an interpreter is requested or when the appointing authority determines that a principal party in interest or witness has a limited ability to understand and communicate in English, a certified interpreter shall be appointed except under those circumstances specified in subsection (6)(B), (C), or (D).

(6)(B) Approved interpreters.

(6)(B)(i) Standards for appointment. An approved interpreter may be appointed only under the following circumstances:

(6)(B)(i)(a) if there is no certification program established under subparagraph (4) for interpreters in the language for which an interpreter is needed,

(6)(B)(i)(b) if there is a certification program established under subsection (4), but no certified interpreter is reasonably available, or

(6)(B)(i)(c) for juvenile probation conferences, if the probation officer does not speak a language understood by the juvenile.

(6)(B)(ii) Court employees may serve as approved interpreters, but their service shall be limited to short hearings that do not take them away from their regular duties for extended periods.

(6)(B)(iii) The administrative office shall keep a list of all approved interpreters pursuant to subsection (6)(B) unless the interpreter is excluded from the list under subsection (10).

(6)(C) Conditionally-approved interpreters.

(6)(C)(i) Standards for appointment. A conditionally-approved interpreter may be appointed only under the following circumstances:

(6)(C)(i)(a) if there is no certification program established under subparagraph (4) for interpreters in the language for which an interpreter is needed and no approved interpreter is reasonably available,

(6)(C)(i)(b) if there is a certification program established under subsection (4), but no certified or approved interpreter is reasonably available, or

(6)(C)(i)(c) for juvenile probation conferences, if the probation officer does not speak a language understood by the juvenile.

(6)(C)(ii) Procedure for appointment. Before appointing a conditionally-approved interpreter, the appointing authority shall:

(6)(C)(ii)(a) evaluate the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence to the accused person involved,

(6)(C)(ii)(b) ask questions as to the following matters in an effort to determine whether the interpreter has a minimum level of qualification:

(6)(C)(ii)(b)(1) whether the prospective interpreter appears to have adequate language skills, knowledge of interpreting techniques and familiarity with interpreting in a court or administrative hearing setting; and

(6)(C)(ii)(b)(2) whether the prospective interpreter has read, understands, and agrees to comply with the code of professional responsibility for court interpreters set forth in appendix H.

(6)(C)(iii) The procedure to conditionally approve a non-certified interpreter must occur every time the interpreter is used.

(6)(C)(iv) Court employees may serve as conditionally-approved interpreters, but their service shall be limited to short hearings that do not take them away from their regular duties for extended periods.

(6)(D) Other interpreters. An interpreter who is neither certified, approved nor conditionally-approved may be appointed when a certified, approved or conditionally-approved interpreter is not reasonably available, or the court determines that the gravity of the case and potential penalty to the accused person involved are so minor that delays attendant to obtaining a certified, approved, or conditionally-approved interpreter are not justified.

(7) Waiver.

(7)(A) A non-English speaking person may at any point in the proceeding waive the right to the services of an interpreter, but only when:

(7)(a)(i) the waiver is approved by the appointing authority after explaining on the record to the non-English speaking person through an interpreter the nature and effect of the waiver;

(7)(a)(ii) the appointing authority determines on the record that the waiver has been made knowingly, intelligently, and voluntarily; and

(7)(a)(iii) the non-English speaking person has been afforded the opportunity to consult with his or her attorney.

(7)(B) At any point in any proceeding, for good cause shown, a non-English speaking person may retract his or her waiver and request an interpreter.

(8) Oath. All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the Code of Professional Responsibility.

(9) Removal in individual cases. Any of the following actions shall be good cause for a judge to remove an interpreter in an individual case:

(9)(A) being unable to interpret adequately, including where the interpreter self-reports such inability;

(9)(B) knowingly and willfully making false interpretation while serving in an official capacity;

(9)(C) knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

(9)(D) failing to follow other standards prescribed by law and the Code of Professional Responsibility; and

(9)(E) failing to appear as scheduled without good cause.

(10) Removal from certified or approved list.

Any of the following actions shall be good cause for a court interpreter to be removed from the certified list maintained under subsection (4)(A)(iii) or from the approved list maintained under subsection (6)(B)(iii):

(10)(A) knowingly and willfully making false interpretation while serving in an official capacity;

(10)(B) knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

(10)(C) failing to follow other standards prescribed by law and the Code of Professional Responsibility; and

(10)(D) failing to appear as scheduled without good cause.

(11) Discipline

(11)(A) An interpreter may be disciplined for violating the Code of Professional Responsibility. Discipline may include decertification, suspension, probation or other restrictions on the interpreter's certification or qualification. Discipline by the ~~advisory panel~~committee does not preclude independent action by the Administrative Office of the Courts.

(11)(B) Any person, including members of the ~~advisory panel~~committee, may initiate a complaint. Upon receipt of a complaint, the ~~advisory panel~~committee shall provide written notice of the allegations to the interpreter. Within 20 days after the notice is mailed, the interpreter shall submit a written response to the complaint. The response shall be sent to the administrative office staff assigned to the ~~advisory panel~~committee.

(11)(C) Upon receipt of the interpreter's response, staff shall attempt to informally resolve the complaint. Informal resolution may include stipulated discipline or dismissal of the complaint if staff determines that the complaint is without merit.

(11)(D)(i) A hearing shall be held on the complaint if informal resolution is unsuccessful, or if the ~~advisory panel~~committee otherwise determines that a hearing is necessary.

(11)(D)(ii) The hearing shall be held no later than 45 days after notice of the complaint was sent to the interpreter. The [advisory panel committee](#) shall serve the interpreter with notice of the date and time of the hearing, via certified mail, return receipt requested.

(11)(D)(iii) The hearing shall be closed to the public. The interpreter may be represented by counsel and shall be permitted to testify, present evidence and comment on the allegations. The [advisory panel committee](#) may ask questions of the interpreter and witnesses. Testimony shall be under oath and a record of the proceedings maintained. The interpreter may obtain a copy of the record upon payment of any required fee.

(11)(E) The [advisory panel committee](#) shall issue a written decision within 10 days from the conclusion of the hearing. The decision shall be supported by written findings and shall be served on the interpreter via first-class mail.

(11)(F) The interpreter may appeal the [advisory panel committee](#)'s decision to the Judicial Council. The interpreter shall file the notice of appeal with the Judicial Council no later than 20 days after the [advisory panel committee](#)'s decision is mailed to the interpreter. The notice of appeal shall include the interpreter's written objections to the decision. The Judicial Council shall review the record of the [advisory panel committee](#) proceedings to determine whether the [advisory panel committee](#) correctly applied procedures and sanctions, and to determine whether the [advisory panel committee](#) abused its discretion. The interpreter and [advisory panel committee](#) members are not entitled to attend the Council meeting at which the proceeding is reviewed.

(12) Payment.

(12)(A) Courts of Record.

(12)(A)(i) In courts of record, the administrative office shall pay interpreter fees and expenses

(12)(A)(i)(a) in criminal cases,

(12)(A)(i)(b) in ~~juvenile court cases brought by a preliminary inquiry or case filed on behalf of~~ the state under Title 78, Chapter 3a, Juvenile Courts,

(12)(A)(i)(c) in cases filed against the state pursuant to U.R.C.P. 65B(b) or 65C,

(12)(A)(i)(d) in cases filed under ~~the Title 30, Chapter 6,~~ Cohabitant Abuse Act,

(12)(A)(i)(e) in cases filed under Title 77, Chapter 3a, Stalking Injunctions,

(12)(A)(i)(f) in cases filed under Title 78, Chapter 3h, Child Protective orders,

(12)(A)(i)(e) in other cases in which the court determines that the state is obligated to pay for an interpreter's services, and

(12)(A)(i)(f) for translation of forms pursuant to paragraph (13).

(12)(A)(ii) In all other civil cases and small claims cases, the party engaging the services of the interpreter shall pay the interpreter fees and expenses.

(12)(A)(iii) Fees. Certified court interpreters shall be paid \$30 per hour. Approved interpreters in languages for which there is no certification program shall be paid \$25 per hour. Approved interpreters in languages for which there is a certification program shall be paid \$20 per hour. Conditionally-approved interpreters in languages for which there is no certification program shall be paid \$20.00 per hour. Conditionally-approved interpreters in languages for which there is a certification program shall be paid \$15.00 per hour. All other interpreters shall not be paid. Payment to interpreters shall be made in accordance with the Courts Accounting Manual. This section does not apply to court employees acting as interpreters.

(12)(A)(iv) Expenses. Mileage for interpreters will be paid at the same rate as state employees for each mile necessarily traveled in excess of 25 miles one-way. Per diem expenses will be paid at the same rate as state employees.

(12)(A)(v) Procedure for payment. The administrative office shall pay fees and expenses of the interpreter upon receipt of a certification of appearance signed by the clerk of the court or other authorized person. The certification shall include the name, address and social security number of the interpreter, the case number, the dates of appearance, the language interpreted, and an itemized statement of the amounts to be paid.

(12)(B) Courts not of record.

(12)(B)(i) In courts not of record, the local government that funds the court not of record shall pay interpreter fees and expenses in criminal cases in which the defendant is determined to be indigent.

(12)(B)(ii) In small claims cases, the party engaging the services of the interpreter shall pay the interpreter fees and expenses.

(12)(B)(iii) Fees. The local government that funds the court not of record shall establish the amount of the interpreter fees.

(12)(B)(iv) Expenses. The local government that funds the court not of record shall establish interpreter expenses, if any, that will be paid.

241 (12)(B)(v) Procedure for payment. The local government that funds the court shall pay the
242 interpreter upon receipt of a certification of appearance signed by the clerk of the court. The
243 certification shall include the name, address and social security number of the interpreter, the
244 case number, the dates of appearance, the language interpreted, and an itemized statement of the
245 amounts to be paid.

246 (13) Translation of court forms. Requests for translation of court forms from English to
247 another language shall be submitted to the ~~advisory panel~~committee. The ~~advisory~~
248 ~~panel~~committee shall determine whether the form shall be translated, reviewing such factors as
249 a) whether the English form has been approved by the Judicial Council or the Supreme Court or
250 is in common use throughout the state, and b) whether an approved translation of the form has
251 already been done. Forms determined by the ~~advisory panel~~committee to be appropriate for
252 translation shall be submitted by the ~~advisory panel~~committee to a team consisting of at least two
253 translators. In languages for which there is a certification program, translators must be certified
254 interpreters, preferably with some translating experience. In languages for which there is no
255 certification program, translators may be qualified interpreters with extensive court interpreting
256 experience, and preferably with some translating experience, or a professional translation service
257 chosen by the ~~advisory panel~~committee. After translation, the administrative office shall
258 distribute the translated documents to the courts statewide.